

be now issued upon the one or the other after the lapse of three years from their date without a revival. (g)

After the time has elapsed by which the plaintiff is precluded from at once issuing an execution upon his judgment, he may still, if it be not satisfied, instead of a *scire facias*, have an action of debt upon it; but the institution of such an action, as it is incompatible with, and cannot be prosecuted at the same time, and together with an execution upon the judgment, amounts to a waiver of the lien arising from the right to issue execution; or an admission, that no such lien then exists. (h) There was formerly no positive limitation to an action of debt upon a judgment; but after the lapse of twenty years it would be presumed to have been satisfied, unless the delay could be sufficiently accounted for. (i) But by our act of Assembly the bringing of such an action of debt has been expressly limited to twelve years. (j)

It appears from the proceedings and the testimony taken in support of the claim of *Stone & McWilliams*, that at the August term, 1822, of St. Mary's County Court, they obtained a judgment against *James Walker* and *Jeremiah Booth*, for the before mentioned amount, from which judgment *Walker* and *Booth* appealed; and, after the case had been taken to the Court of Appeals, and placed there for argument, *Jeremiah Booth*, on the 10th November, 1824, died; that afterwards, at June term, 1825, of the Court of Appeals, the judgment of the county court was affirmed; and that a part of the judgment so affirmed had been satisfied by *Walker*, who had since become totally insolvent. There has been here therefore not only a considerable lapse of time since the rendition of the judgment by the county court, but an abatement by the death of *Booth* since the judgment was rendered.

But it has been declared, that no case in the Court of Appeals,

(g) *Barrington v. O'Brien*, 1 Ball & Be. 173; *Matthews' Presum.* 470; *Thomas v. Harvie*, 10 Wheat. 146; *Berrett v. Oliver*, 7 G. & J. 207.

*STUMP v. HOPKINS*.—On the petition in this case a *ca. sa.* was ordered, on the return of which it was moved to quash the execution, because more than a year had elapsed from the date of the decree before the application for the *ca. sa.*

1806.—*KILTY, Chancellor*.—This objection is such as to cause some doubt, and to require consideration; therefore, the execution must be quashed as having been erroneously issued.—M. S.; *Forum Rom.* 192; 1823, ch. 194.

—(A) *Selwin*, N. P. 627; 3 *Blac. Com.* 160, note; *Bates v. Lockwood*, 1 T. R. 638; *Holmes v. Wainwright*, 1 Swan. 23; *Sasscer v. Walker*, 5 G. & J. 103.—(i) *Kemys v. Ruscomb*, 2 Atk. 45; *Hales v. Hales*, 1 Rep. Cha. 105; *Winchcomb v. Winchcomb*, 2 Rep. Cha. 101.—(j) 1715, ch. 23, s. 6; *Hammond v. Denton*, 1 H. & McH. 200.